Anascape, Ltd v. Nintendo of America, Inc. Doc. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

Anascape, Ltd., Plaintiff, v. Microsoft Corp., and Nintendo of America, Inc. Defendants.	Civil Action No. 9:06-cv-158-RC JURY TRIAL REQUESTED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Anascape, Ltd. ("Anascape") file this first amended complaint for patent infringement and states as follows:

THE PARTIES

1. Plaintiff Anascape, Ltd. is a Limited Partnership organized and existing under the laws of the State of Texas, and maintains its principal place of business in Tyler, Texas.

2. Upon information and belief, Defendant Microsoft Corp. ("Microsoft") is a corporation organized and existing under the laws of Washington with its principal place of business at One Microsoft Way, Redmond, Washington 98052. Microsoft manufactures for sale and/or sells video game consoles and video game controllers to consumers in the United States and, more particularly, in the Eastern District of Texas.

3. Upon information and belief, Defendant Nintendo of America, Inc. ("Nintendo") is a corporation organized and existing under the laws of Washington with its principal place of business at 4820 150th Avenue NE, Redmond, Washington 98052. Upon information and belief, Nintendo is a wholly owned subsidiary of Nintendo Co., Ltd., a

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corporation organized and existing under the laws of Japan with its principal place of business at 11-1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501, Japan. Nintendo manufactures for sale and/or sells video game consoles and video game controllers to consumers in the United States and, more particularly, in the Eastern District of Texas.

4. Microsoft and Nintendo are collectively referred to herein as the "Defendants."

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

7. This Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of Texas. Each Defendant, directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products in the United States, the State of Texas, and the Eastern District of Texas. Each Defendant has purposefully and voluntarily placed one or more of its infringing products, as described below, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. These infringing products have been and continue to be purchased by consumers in the Eastern District of Texas. Each Defendant has committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

PATENT INFRINGEMENT

8. Anascape incorporates by reference paragraphs 1-7 as if fully set forth herein.

9. On December 7, 1999, United States Patent No. 5,999,084 (“the ’084 patent”) entitled “Variable-Conductance Sensor” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’084 patent are owned by Anascape. A true and correct copy of the ’084 patent is attached hereto as Exhibit A.

10. On August 15, 2000, United States Patent No. 6,102,802 (“the ’802 patent”) entitled “Game Controller with Analog Pressure Sensor(s)” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’802 patent are owned by Anascape. A true and correct copy of the ’802 patent is attached hereto as Exhibit B.

11. On October 24, 2000, United States Patent No. 6,135,886 (“the ’886 patent”) entitled “Variable-Conductance Sensor with Elastomeric Dome-Cap” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’886 patent are owned by Anascape. A true and correct copy of the ’886 patent is attached hereto as Exhibit C.

12. On March 27, 2001, United States Patent No. 6,208,271 (“the ’271 patent”) entitled “Remote Controller with Analog Button(s)” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’271 patent are owned by Anascape. A true and correct copy of the ’271 patent is attached hereto as Exhibit D.

13. On April 24, 2001, United States Patent No. 6,222,525 ("the '525 patent") entitled "Image Controllers with Sheet Connected Sensors" was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the '525 patent are owned by Anascape. A true and correct copy of the '525 patent is attached hereto as Exhibit E.

14. On February 5, 2002, United States Patent No. 6,343,991 ("the '991 patent") entitled "Game Control with Analog Pressure Sensor" was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the '991 patent are owned by Anascape. A true and correct copy of the '991 patent is attached hereto as Exhibit F.

15. On February 5, 2002, United States Patent No. 6,344,791 ("the '791 patent") entitled "Variable Sensor with Tactile Feedback" was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the '791 patent are owned by Anascape. A true and correct copy of the '791 patent is attached hereto as Exhibit G.

16. On February 19, 2002, United States Patent No. 6,347,997 ("the '997 patent") entitled "Analog Controls Housed with Electronic Displays" was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the '997 patent are owned by Anascape. A true and correct copy of the '997 patent is attached hereto as Exhibit H.

17. On February 26, 2002, United States Patent No. 6,351,205 ("the '205 patent") entitled "Variable-Conductance Sensor" was duly and legally issued with Brad Armstrong as

the named inventor after full and fair examination. All rights and interest in the ’205 patent are owned by Anascape. A true and correct copy of the ’205 patent is attached hereto as Exhibit I.

18. On June 4, 2002, United States Patent No. 6,400,303 (“the ’303 patent”) entitled “Remote Controller with Analog Pressure Sensor(s)” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’303 patent are owned by Anascape. A true and correct copy of the ’303 patent is attached hereto as Exhibit J.

19. On May 13, 2003, United States Patent No. 6,563,415 (“the ’415 patent”) entitled “Analog Sensor(s) with Snap-Through Tactile Feedback” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’415 patent are owned by Anascape. A true and correct copy of the ’415 patent is attached hereto as Exhibit K.

20. On June 14, 2005, United States Patent No. 6,906,700 (“the ’700 patent”) entitled “3D Controller with Vibration” was duly and legally issued with Brad Armstrong as the named inventor after full and fair examination. All rights and interest in the ’700 patent are owned by Anascape. A true and correct copy of the ’700 patent is attached hereto as Exhibit L.

21. The ’084, ’802, ’886, ’271, ’525, ’991, ’791, ’997, ’205, ’303, ’415, and ’700 patents are collectively referred to herein as the “Patents-in-Suit.”

22. Microsoft has infringed and/or continues to infringe the ’084, ’802, ’886, ’271, ’525, ’991, ’791, ’997, ’205, ’303, ’415, and ’700 patents (collectively, the “Microsoft Infringed Patents”). Microsoft is liable for direct infringement and/or indirect infringement by way of inducement or contributory infringement of these patents pursuant to 35 U.S.C. § 271.

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23. Nintendo has infringed and/or continues to infringe the ’525, ’791, ’205, ’415, and ’700 patents (collectively, the “Nintendo Infringed Patents”). Nintendo is liable for direct infringement and/or indirect infringement by way of inducement or contributory infringement of these patents pursuant to 35 U.S.C. § 271.

24. Defendants’ acts of infringement have caused damage to Anascape. Anascape is entitled to recover from Defendants the damages sustained by Anascape as a result of Defendants’ wrongful acts in an amount subject to proof at trial. Defendants’ infringement of Anascape’s rights under the Patents-in-Suit will continue to damage Anascape’s business, causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court.

25. Prior to the filing of the present lawsuit, Anascape provided Defendants with actual notice of infringement. Alternatively, this Complaint provides Defendants with actual notice of infringement.

26. Upon information and belief, the Defendants’ infringement of the Patents-in-Suit is willful and deliberate entitling Anascape to enhanced damages and to attorneys’ fees incurred in prosecuting this action.

DEMAND FOR JURY TRIAL

Anascape hereby demands a jury for all issues so triable.

PRAYER

WHEREFORE, Anascape prays for judgment that:

1. Microsoft has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the Microsoft Infringed Patents;

2. Nintendo has directly infringed, and/or indirectly infringed by way of inducement and/or contributory infringement, the Nintendo Infringed Patents;

3. Microsoft, and any of its officers, agent, servants, employees, subsidiaries, parents, attorneys, and those persons acting in concert, on behalf of, in joint venture, or in partnership with Microsoft, be enjoined from infringing, inducing to infringe, or contributing to the infringement of any of the Microsoft Infringed Patents;

4. Nintendo, and any of its officers, agent, servants, employees, subsidiaries, parents, attorneys, and those persons acting in concert, on behalf of, in joint venture, or in partnership with Nintendo, be enjoined from infringing, inducing to infringe, or contributing to the infringement of any of the Nintendo Infringed Patents;

5. Damages be paid to Anascape by Defendants for Defendants' infringement of the Patents-in-Suit;

6. Defendants' infringement is willful and deliberate, entitling Anascape to enhanced damages;

7. This case be found an exceptional case, entitling Anascape to attorneys' fees incurred in prosecuting this action;

8. Anascape are entitled to an accounting of Defendants' revenues resulting directly or indirectly from Defendants' infringement of the Patents-in-Suit, including supplemental damages for any continuing post-verdict infringement up until entry of the final Judgment;

9. Defendants pay Anascape pre-judgment and post-judgment interest on the damages awarded;

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10. In the event a permanent injunction preventing future acts of infringement is not granted, that Anascape be awarded a compulsory ongoing licensing fee; and

11. Anascape be granted such other and further relief as the Court may deem just and proper.

DATED: November 21, 2006.

Respectfully submitted,

McKOOL SMITH, P.C.

/s/ Sam Baxter
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ATTORNEYS FOR PLAINTIFF ANASCAPE, LTD.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record via ECF or U.S. Mail on this 21st day of November, 2006.

/s/ Luke F. McLeroy

Luke F. McLeroy